UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
EASTERN DIVISION

In re: SHAMUS HOLDINGS, LLC, Debtor.	Chapter 11 Case No. 07-14572 (JNF)

DEBTOR'S SUPPLEMENTAL OPPOSITON TO MOTION OF LBM FINANCIAL, LLC TO DISMISS CHAPTER 11 PROCEEDING

Preliminary Statement

Shamus Holdings, LLC, as debtor and debtor in possession herein ("Shamus Holdings" or the "Debtor") hereby submits this Supplemental Opposition to the Motion of LBM Financial, LLC to Dismiss Chapter 11 Proceeding (the "Motion to Dismiss").[1] Since the filing of its original Opposition to the Motion to Dismiss, the Debtor, through sworn testimony, has confirmed that LBM **never actually made** the loan that it claims is the basis for its alleged mortgage against the Debtor's property.

Specifically, on September 20 and September 21, 2007, the Debtor conducted 2004 Examinations of Foundry Realty by and through its Manager, Stuart Sojcher and of 655 Corporation ("655 Corp.") by and through its former principal and majority owner, Bernard J. Laverty. Among other things, both Messrs. Sojcher and Laverty testified that the alleged "loan" giving rise to LBM's mortgage against the Foundry Property was a sham transaction conceived of and executed by LBM, 655 Corp, Foundry and their respective principals to induce General Bank (n/k/a Cathay Bank) to make a $5,600,000 construction loan that would enable 655 Corp to develop the condominium project for which 655 Corp was established. The General Bank loan would also enable 655 Corp. to repay a portion of a pre-existing loan from an affiliate of LBM, Wolfpen Financial.

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[1] Capitalized terms not defined herein shall have the same meaning ascribed to them in the Debtor's initial Opposition.

Successfully defrauding a federally insured lender was not enough for LBM, however. After taking no action for nearly two years after the Foundry Property was foreclosed upon and sold by Pine Banks to the predecessor of Shamus Holdings, LBM commenced a foreclosure proceeding on the basis of its bogus guaranty and mortgage. Emboldened by the inability of Pine Banks, the lender who foreclosed upon and sold the Foundry Property in 2005, to obtain injunctive relief against it, LBM chased Shamus Holdings into bankruptcy continuing to assert its rights under the bogus Foundry Guaranty and Foundry Mortgage. Evidently, the risk of civil and criminal penalties are no deterrent to LBM.

In light of the testimony given by the LBM's putative "borrower" and "guarantor", the Motion to Dismiss must be denied. More importantly, LBM must now be held accountable for its unthinkable misconduct.

The "Loan Arrangement" Evidenced by the LBM/655 Note is a Sham

At all times relevant to these proceedings, Bernard Laverty and Barry Queen were the owners, officers and directors of 655 Corp., which was attempting to develop a condominium project at its property on East Second Street in South Boston (the "East Second Street Property"). 2004 Examination of Bernard Laverty, September 21, 2007 ("Laverty Exam") at p. 8. A copy of the Laverty Exam is attached hereto as Exhibit A. During the same time frame, Stuart Sojcher was the Manager of Foundry Realty LLC ("Foundry"). 2004 Examination of Stuart Sojcher, September 20, 2007 ("Sojcher Exam") at p.30. A copy of the Sojcher Exam is attached hereto as Exhibit B. On the surface, 655 Corp. and Foundry were unrelated in terms of both ownership and management. Beneath the surface, however, these two entities were part of an extensive network of real estate development and related businesses owned and controlled by convicted racketeer Francis K. Fraine[2]. Exhibit A at pp.11-13; Exhibit B at p. 28. Each of these businesses was operated from offices located at the Foundry Property. Exhibit A at pp.15-16; Exhibit B at 31. According to Laverty and Sojcher:

- In the Spring of 2003, 655 Corp. was attempting to arrange construction financing for its development of the East Second Street Property. At that time, 655 Corp. owed Wolfpen Financial, a lender owned and controlled by Marcello Mallegni and William DiPietri, approximately $2,800,000.00. Exhibit A at pp. 17, 27-28.

- 655 Corp approached General Bank, a federally insured lending institution, for a $5,600,000.00 construction loan facility. General Bank agreed to make the loan, **but only** if $1,200,000.00 of equity or other capital could be infused into the project. In response to General Bank's demand, 655 Corp. and Wolfpen hatched a scheme that would lead General Bank to believe that $1,200,000.00 had been infused into 655 Corp. and that the Wolfpen mortgage debt would be fully satisfied by the proposed construction loan. Exhibit A at pp. 27-29, 31-32; Exhibit B at pp. 54-58.

- Specifically, on May 9, 2003, a "loan closing" was held at the law offices of Michael J. Norris, counsel to Wolfpen and LBM. At that time, a full set of commercial loan documents was executed that purported to evidence a $1,200,000.00 loan from LBM to 655 Corp. (the promissory note executed in connection with this sham transaction is referred to herein as the "LBM/655 Note"). Even though Foundry Realty, LLC had no legal connection to 655 Corp.,[3] a "guaranty" of the LBM/655 Note was executed by Foundry (the "Foundry Guaranty"). Importantly, the Foundry Guaranty provides that "this Guaranty is executed and delivered to induce the Lender to lend the Loan Amount to the Borrower, said loan being evidenced by a Note of the Borrower, dated May 9, 2003.…" A copy of the Foundry Guaranty is attached hereto as Exhibit C.

- In furtherance of this scheme to create the appearance of fresh capital being infused into 655 Corp., Attorney Michael Norris prepared a phony HUD-1 Settlement Statement (the "Settlement Statement") depicting various deductions and credits allegedly taken in connection with the LBM loan to 655 Corp. The deductions identified in the Settlement

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[2] According to testimony given by both Laverty and Sojcher, Francis Fraine owned and controlled, among others, 655 Corp., Foundry, 320 Corp., SOS Realty, Platinum Investment Services, Citiscapes and On Broadway Corp.

[3] Except for its undisclosed relationship to Francis Fraine.

Statement include a 4% loan origination fee, $3,000 to purchase a lenders' title insurance policy, $5,000 for lender's attorneys' fees and a $500 processing fee to Stone Services. Like the sham loan itself, none of these charges were legitimate. Norris even went so far as to execute a certification at the bottom of the Settlement Statement representing that "[t]o the best of my knowledge the HUD-1 Settlement Statement which I have prepared is [a] true and accurate account of the funds which were received and have been or will be disbursed by the undersigned as part of the settlement of this transaction." A copy of the HUD-1 Settlement Statement is attached hereto as Exhibit D.

- Despite what the LBM/655 Note, the Foundry Guaranty, the Settlement Statement and LBM Mortgage against the Foundry Property purport to represent, both Sojcher and Laverty testified that no loan in any amount was made by LBM to 655 Corp. on May 9, 2003. Exhibit A at 18-19, 28-29; Exhibit B at 54-55.

- In furtherance of this phony loan scheme, on May 11, 2003, Barry Queen sent a letter to Linda Moulton, Senior Vice President of General Bank, stating as follows:

> This letter is to confirm that as of the above date 655 Corporation paid the sum of ONE MILLION TWO HUNDRED THOUSAND ($1,200,000.00) DOLLARS in good funds to WolfPen Financial[4] in partial retirement of the $2,800,000.00 current financing on the building located at 653-655 East Second Street, S. Boston, MA 02127. The partial retirement is in anticipation of the construction loan to be placed on the building by your financial institution for the construction and sale of 18 condominiums. It is my understanding with WolfPen that upon your financial institution tendering ONE MILLION FIVE HUNDRED NINETY EIGHT THOUSAND FIVE HUNDRED ($1,598,500.00) DOLLARS to WolfPen a full discharge of their mortgage will be recorded.

A copy of the letter dated May 11, 2003 from Barry Queen to Linda Moulton is attached hereto as Exhibit E.

- Four days later on May 14, 2003, General Bank made a construction loan to 655 Corp. in the sum of $5,600,000.00. In connection with the closing, Attorney Michael Norris, sent Linda Moulton a letter advising her that he would use $1,598,500.00 of the General Bank construction loan "***plus***

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[4] If, in fact, the Settlement Statement prepared by Michael Norris was genuine, then it would be impossible for 655 Corp to pay Wolfpen $1,200,000 from the LBM loan proceeds, because only $1,125,725 was available after itemized deductions were taken.

additional funds which will be wired to me from 655 Corp. to make up the payoff to Wolfpen Financial LLC." (emphasis added)

- In reliance upon the phony loan scam perpetrated by Queen, Norris and others, General Bank believed that: (i) 655 Corp. had received a capital infusion of $1,200,000.00 from LBM; and (ii) 655 Corp.'s mortgage debt to Wolfpen Financial had been fully satisfied. Exhibit A at pp.18-19; Exhibit B at pp. 55-56

- Despite the fact that the Wolfpen mortgage was purportedly fully satisfied, Wolfpen did not discharge its Mortgage against the East Second Street Property. Rather, Wolfpen assigned its mortgage to On Broadway Corporation, an entity affiliated with Attorney Frank Kirby, but owned and controlled by Francis Fraine. Exhibit A at pp. 36-37.

- In addition, both Sojcher and Laverty testified that before Pine Banks made its mortgage loan to Foundry Realty, LLC in November 2003, each had conversations with Michael Norris and Marcello Mallegni, both of whom agreed that the LBM Mortgage would be subject to first mortgage financing from Pine Banks (which financing was provided to enable Foundry to pay off its existing first mortgage to Fanueil Investor Group). Exhibit A at pp. 38-40; Exhibit B at pp. 61-64.

- Laverty also testified that at the time that General Bank closed its loan with 655 Corp., an agreement was reached between all parties, including LBM Financial, that the additional mortgages granted to General Bank and LBM in connection with the LBM/655 Note, including the LBM Mortgage against the Foundry Property, would be discharged when the East Second Street Property reached specific stages of completion. When the triggering event occurred for a release of mortgages against the Foundry Property, General Bank released its mortgage but LBM did not. Exhibit A at pp. 19-20, 24-25, 34..[5]

LBM's Motion to Dismiss Should Be Denied and the Rule 2004 Examination of LBM Should Be Permitted to Proceed

The aforementioned testimony from the putative borrower and guarantor in this case makes clear that LBM and its principals Marcello Mallegni and Michael Norris have no reservations about perpetrating bank, wire and mail fraud (not to mention fraud upon a federal court) and that they will utterly disregard their legal commitments no matter what the risk and no matter who the victim. Specifically, LBM, Mallegni and Norris contrived a bogus loan transaction for the singular purpose of defrauding a federally insured lending institution out of $1,600,000 (i.e., the amount paid to Wolfpen from the General Bank construction loan). Unsatisfied with the return on its fictitious "loan arrangement", and after chasing Shamus Holdings into bankruptcy, LBM now comes to this Court asserting a right to be paid more than $4,000,000 on a $1,200,000 loan **it never made**. Under these circumstances, the good faith conduct of Shamus Holdings stands in stark contrast to the fraudulent misconduct and boundless bad faith of LBM Financial.

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[5] If LBM wants to stick by its story that the 655/LBM Note is legitimate and that its "loan transaction" is somehow the same as a loan -- which based on the plain language of the Foundry Guaranty it is not -- then the Court should grant the 2004 Applications filed by Shamus Holdings and permit the Debtor to obtain documents and testimony from Marcello Mallegni and Michael Norris.

WHEREFORE, Shamus Holdings respectfully requests that the Court enter an Order: (a) denying the Motion of LBM Financial to Dismiss; (b) granting the pending Applications of Shamus Holdings for authority to conduct 2004 Examinations of LBM Financial by and through its principal agents Marcello Mallegni and Attorney Michael Norris; and (c) affording Shamus Holdings such other and further relief as the Court deems equitable and just.

Respectfully submitted,

SHAMUS HOLDINGS, LLC,

/s/ Charles A. Dale III

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